41369 SERVICE DATE – FEBRUARY 27, 2013
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SURFACE TRANSPORTATION BOARD

Docket No. NOR 42126

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI AND MISSOURI CENTRAL RAILROAD COMPANY v. UNION PACIFIC RAILROAD COMPANY

Docket No. FD 33508

MISSOURI CENTRAL RAILROAD COMPANY
–ACQUISITION AND OPERATION EXEMPTION–
LINES OF UNION PACIFIC RAILROAD COMPANY

Docket No. FD 33537

GRC HOLDINGS CORPORATION
–ACQUISITION EXEMPTION–
LINES OF UNION PACIFIC RAILROAD COMPANY

Digest:[1] When Union Pacific Railroad completed the sale of a rail line to Missouri Central Railroad Company in 1999, it involved a contractual service restriction, which prevents Missouri Central Railroad Company from serving an electric generating station owned by Ameren Missouri. Missouri Central Railroad Company and Ameren Missouri now ask the Board to remove the service restriction in the sales agreement so that Missouri Central Railroad Company could provide rail service to Ameren Missouri, which already receives service from two other railroads. The Board is rejecting this request, as we find no basis to partially revoke our prior approval to restructure the terms of sale between these parties.

Decided: February 26, 2013

On November 22, 2010, Union Electric Company, doing business as Ameren Missouri (hereinafter referred to as either Union Electric or Ameren Missouri), and the Missouri Central Railroad Company (MCRR) filed a complaint, and alternative petition to partially revoke an exemption, against the Union Pacific Railroad Company (UP). Specifically, the complaint refers to the terms of UP's 1997 sale of the former Chicago, Rock Island, and Pacific Railroad Line

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

(Rock Island Line) to MCRR, in which MCRR agreed to a permanent prohibition against providing rail service to an electric generating station owned by Ameren Missouri at Labadie, Mo. (Labadie Plant).[2] MCRR[3] and Ameren Missouri ask the Board to partially revoke its authority for the sale, and to modify the terms of the sale to permit MCRR to serve the Labadie Plant. UP filed an answer on December 13, 2010, asking the Board to dismiss the complaint. On the basis of the facts and arguments submitted in this proceeding, the Board is denying this complaint.

BACKGROUND

In the early 1970s, Union Electric completed construction of the Labadie Plant at the intersection of the Rock Island Line and the former Missouri Pacific Railroad Line (MP Line), and began operations. The Labadie Plant has a capacity of 2.405 megawatts, burns over 10 million tons of coal annually, and is Missouri's largest power plant. The Labadie Plant currently receives its coal from the Powder River Basin (PRB) in Wyoming, nearly all of which is delivered by UP.[4]

In 1980, the Rock Island Line was bought by the St. Louis Southwestern Railroad Company (SSW), a subsidiary of Southern Pacific Rail Corporation (SP). In the early 1980s, SP also obtained operating rights on the MP Line between Kansas City, Mo., and St. Louis, Mo.[5] In

[2] Contractual provisions included with a sale or lease of a rail line that limit the incentive or ability of the purchaser or tenant carrier to provide service, or interchange traffic with rail carriers other than the seller or lessor railroad, are often referred to as interchange commitments or "paper barriers." See Review of Rail Access and Competition Issues—Renewed Pet. of the Western Coal Traffic League (Review of Rail Access), EP 575 et al., slip op at 1 (STB served Oct. 30, 2007). The Board requires parties seeking to obtain an individual exemption for, or to invoke a class exemption covering, a transaction involving the sale or lease of a railroad line, to identify any provision in their agreements that would restrict the ability of the purchaser or tenant railroad to interchange traffic with a rail carrier other than the seller or landlord railroad. See Disclosure of Rail Interchange Commitments, EP 575 (Sub-No. 1), slip op at 1 (STB served May 29, 2008). On October 29, 2012, the Board proposed rules that would require such parties to include additional information about the interchange commitments in their filings. See Information Required in Notices and Pets. Containing Interchange Commitments, EP 714, slip op at 1 (STB served Nov. 1, 2012).

[3] MCRR is owned by a corporate affiliate of Ameren Missouri. See Ameren Missouri's Opening Evidence I. 25, n.27.

[4] Ameren Missouri's Complaint 4. BNSF Railway Company (BNSF) stated in a 2001 status report that it moved 50 trains to the Labadie Plant, but Ameren Missouri states that it cannot locate the records for these movements, and also claims that BNSF has only moved a handful of trains to the Labadie Plant in the past 10 years. See Ameren Missouri's Opening Evidence I. 15, n.12; see also Ameren Missouri's Opening Evidence I. 15; V.S. Jones at 2.

[5] Id. I. 13.

1984, UP bought the MP Line, which it currently owns. In the 1990s, UP acquired the Rock Island Line as a successor-in-interest to SSW[6] through the UP-SP merger, described further below.

In 1995, UP and SP announced their decision to merge. UP and SP signed a framework agreement on August 3, 1995, that set general details of the planned merger. UP and SP entered into a settlement agreement with BNSF on September 25, 1995 (Settlement Agreement), to address concerns regarding the competitive impacts of the merger. The Settlement Agreement granted BNSF nearly 4,000 miles of trackage rights over the UP-SP lines, gave UP-SP 376 miles of trackage rights over BNSF lines, and identified and addressed the "2-to-1" competition service areas on the merged UP-SP lines.[7]

On September 29, 1995, UP informed Ameren Missouri that the Settlement Agreement did not cover the Labadie Plant.[8] According to UP, it offered Ameren Missouri the following four options:[9]

1. Ameren Missouri could purchase the Rock Island Line with unrestricted access to the Labadie Power Plant;
2. Another carrier could purchase the Rock Island Line with unrestricted access to the Labadie Power Plant;
3. Another carrier could obtain unrestricted trackage rights over the Rock Island Line;
4. UP could move coal to the Labadie Power Plant at a defined rate via interchanges at St. Louis or Kansas City and Ameren Missouri could combine that service with rates from any carrier that could reach the interchanges.

UP states that Ameren Missouri selected the fourth option. On March 14, 1996, Ameren Missouri and UP signed a conceptual framework agreement that memorialized that choice.[10] UP states that Ameren Missouri informed the Board in sworn testimony in March 1996 that the selected fourth option ensured ongoing competition for rail service to the Labadie Plant after the UP-SP merger.[11]

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[6] See Mo. Cent. R.R.—Acquis. and Operation Exemption—Lines of Union Pac. R.R., FD 33508 et al., slip op. at 2 (STB served Apr. 28, 1998).

[7] Areas where pre-merger service was provided by UP and SP. See UE Pet. for Clarification and Enforcement of Merger Conditions (UE Petition), FD 32760 at 9 (STB filed on Jan. 19, 2000); see also Union Pac. Corp., et al.—Control and Merger—Southern Pac. Rail, FD 32760, slip op. at 161 (STB served Aug. 12, 1996).

[8] See id.

[9] UP's Reply 4-5.

[10] See UE Petition 7.

[11] UP's Reply 5; see also Exhibit C, UP's Reply.

On August 12, 1996, the Board served a decision approving the merger application for UP and SP. The Board's approval incorporated the provisions of the Settlement Agreement as conditions to the approval. The Board specifically ruled out concerns regarding the impact of the merger on shippers experiencing a "3-2" shift in service competition, stating that the proposed merger, as conditioned, presented little potential for significant competitive harm, because most of that traffic enjoyed vigorous motor carrier competition. UP consummated the merger on September 11, 1996.

On November 3, 1997, UP, GRC Holdings Corporation (GRC), and MCRR executed a line sale contract (Line Sale Contract) for the Rock Island Line, but the transaction (scheduled to close a week later) was delayed due to a lack of funding.[12] On February 17, 1999, GRC asked Ameren Missouri to finance the purchase of the Rock Island Line.[13] In March 1999, an Ameren Missouri affiliate negotiated a shareholder agreement, a stock purchase agreement, and a management agreement with GRC that would govern the financing of the Rock Island Line purchase.[14] On September 14, 1999, MCRR received permission from the Board to acquire the Rock Island Line in a transaction where GRC bought the Rock Island Line from UP and immediately conveyed the line to MCRR.[15] The Line Sale Contract incorporated a trackage rights agreement dated October 5, 1999 (Trackage Rights Agreement) (collectively, Line Sale Agreements). The terms of the Line Sale Contract state that neither MCRR nor its successors, assigns, or tenants can serve the facilities of Union Electric at or near Labadie, Missouri, over the line of railroad being acquired (including over trackage rights on either end of the line which is being purchased) either directly over the existing switch or via new construction.[16] The Trackage Rights Agreement further states that MCRR shall not have the right to move any equipment containing coal to the power generating facilities of Union Electric (or any successor) at Labadie, Missouri.[17] The sale of the Rock Island Line to MCRR was completed on October 7, 1999.

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[12] On December 23, 1997, MCRR filed a notice of exemption to acquire the rail assets of GRC, to operate the rail line, and to acquire the Joint Trackage Rights. On December 24, 1997, GRC filed a notice of exemption to acquire the Rock Island Line.

[13] Ameren Missouri's Opening Evidence I. 5.

[14] Ameren states that in 2001, the GRC management agreement was terminated, and the remaining shares held by GRC are now owned by Ameren Development Company, as the sole owner of MCRR. See Ameren Missouri's Opening Evidence I. 22.

[15] The two transfers had been consolidated in proceedings before the Board. See Mo. Cent. R.R.—Acquis. and Operation Exemption—Lines of Union Pac. R.R., FD 33508 et al. (STB served Apr. 28, 1998); see also Mo. Cent. R.R.—Acquis. and Operation Exemption—Lines of Union Pac. R.R., FD 33508 et al. (STB served Sept. 14, 1999).

[16] See Line Sale Contract at 4-5, Exhibit C, Ameren Missouri's Complaint.

[17] See Section 3(iv) of the Trackage Rights Agreement, Exhibit C, Ameren Missouri's Complaint; see also Section 1.8 of Exhibit B, Trackage Rights Agreement, Exhibit C, Ameren Missouri's Complaint.

In 2000, Union Electric (then doing business as AmerenUE) filed a petition asking the Board to confirm that the Settlement Agreement applied to the Labadie Plant. Union Electric claimed that UP and SP previously acknowledged that the Labadie Plant met the definition of a "2-to-1" point.[18] In its responsive filings, UP acknowledged that the Labadie Plant was a 2-to-1 shipper, but claimed that the Settlement Agreement did not apply to the Labadie Plant.[19]

In a decision served on June 1, 2000, the Board confirmed that the Settlement Agreement applied to the Labadie Plant, and directed UP and BNSF to negotiate an agreement permitting BNSF to provide service to the Labadie Plant.[20] In so finding, the Board specifically noted the service limitation on MCRR and the Rock Island Line that precluded MCRR service to the Labadie facility.[21]

On November 22, 2010, Ameren Missouri and MCRR filed their complaint, as well as a motion for protective order and a motion for procedural schedule. On December 13, 2010, UP filed an answer to the complaint, a reply to the motion for protective order, and a reply to the motion for procedural schedule. On December 21, 2010, the Board granted a motion for protective order in this proceeding. On January 14, 2011, the Board served a decision that instituted a procedural schedule and modified the previously served protective order. On April 18, 2011, Ameren Missouri and MCRR filed their opening evidence.[22] UP filed its reply on June 17, 2011.

POSITIONS OF THE PARTIES

Ameren Missouri and MCRR. In their pleadings, Ameren Missouri and MCRR ask the Board to find that certain provisions in the Line Sale Agreements are unlawful and cannot be enforced. Alternatively, Ameren Missouri and MCRR ask the Board to partially revoke the exemption covering the sale of the Rock Island Line and related trackage rights. The complainants also ask that the Board declare that the contested provisions are anticompetitive and therefore void under the rail transportation policy.[23]

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[18] See UE Petition 6, n.10.

[19] Union Pac. Corp., et al.—Control and Merger—Southern Pac. Rail, FD 32760, slip op. at 3 (STB served June 1, 2000) (UP Control and Merger).

[20] Id. at 7.

[21] UP Control and Merger, slip op. at 8, n.23.

[22] Also on April 18, 2011, Ameren Missouri and MCRR filed a petition for waiver of service obligation. In a decision served on April 29, 2011, the Board granted the petition to the extent of limiting the service list to the parties listed on the service list in this proceeding.

[23] Ameren Missouri's Complaint 2-3.

In support of these requests, Ameren Missouri and MCRR assert that the Line Sale Contract provision that prohibits MCRR from serving the Labadie Plant[24] (Labadie Service Restriction) is an unlawful and unenforceable paper barrier.[25] Despite the participation of its corporate affiliates in the sale of the Rock Island Line, Ameren Missouri claims that it had no role in negotiating or drafting the Line Sale Agreements, and asserts that the terms had been reached long before Ameren Missouri was approached by GRC.[26] Ameren Missouri claims that UP stated in 1999 that the deal would only proceed under the original terms, thus suggesting that Ameren Missouri had little ability to alter the terms of the sale.[27] Ameren Missouri and MCRR further claim the Labadie Service Restriction violates 49 U.S.C. § 11101 by preventing MCRR from meeting its common carrier obligation to provide transportation or service upon reasonable request to the Labadie Plant, and also claim that this paper barrier contravenes Ameren Missouri's right to service.[28] The complainants argue that MCRR's common carrier obligation is not dependent on the service that other railroads can or cannot provide to the Labadie Plant.[29] Ameren Missouri and MCRR assert that contractual terms such as the Labadie Service Restriction, which prevent a railroad from meeting its common carrier obligation, are void under § 11101(a), which states that commitments that deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.[30]

Ameren Missouri and MCRR further argue that the Labadie Service Restriction provides no service or cost benefits to shippers, while decreasing the financial stability of MCRR, and increasing the likelihood that the Rock Island Line will be abandoned.[31] Ameren Missouri and MCRR also argue that Ameren Missouri has effectively paid for the option of service from BNSF by spending a significant amount of money to allow BNSF access, and that despite this expenditure, BNSF trackage rights are not providing the full benefit of competition to the Labadie Plant, as BNSF has merely delivered a small number of trains, and therefore Ameren

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[24] Specifically, the complainants identify Section 3(a) of the Line Sale Contract, Section 3(iv) of the incorporated Trackage Rights Agreement, and Section 1.8 of Exhibit B of the Trackage Rights Agreement as the provision at issue.

[25] Ameren Missouri's Complaint 13.

[26] Ameren Missouri's Opening Evidence I. 20.

[27] Id. This evidence was filed confidentially by Ameren Missouri and MCRR. Although we generally attempt to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. In this case, we have determined that we could not adequately present our findings without summarizing certain confidential information.

[28] Id. I. 24.

[29] Id. I. 34.

[30] Id. I. 24, 25.

[31] Id. I. 30, 31.

Missouri has been unable to recoup its BNSF access costs.[32] Ameren Missouri and MCRR argue that they will owe no additional compensation to UP if the Labadie Service Restriction is removed, and claim that the price Ameren/MCRR paid for the Rock Island Line was not discounted due to the inclusion of the Labadie Service Restriction.[33]

UP. On June 17, 2011, UP filed a reply asking the Board to either dismiss the complaint or hold the proceeding in abeyance. UP argues there is no need for Board action as UP is willing to negotiate with MCRR to establish Rock Island Line service to the Labadie Plant. UP also argues that Ameren Missouri is not being unlawfully deprived of common carrier service as the Labadie Plant is currently being served by two carriers (BNSF and UP) and that Ameren Missouri is not entitled to service from a third carrier. UP further states that Ameren Missouri and MCRR have previously argued to the Board that the contested provisions were valid. UP asks that the complaint be dismissed with prejudice; that no relief of any kind be awarded to Ameren Missouri or MCRR; and that the Board grant UP such other and further relief as may be appropriate.

In its reply, UP claims that Ameren Missouri and MCRR have acknowledged that the transaction helped ensure continued rail service for shippers on the Rock Island Line and advanced Ameren Missouri's own interest in economic development within its service area.[34] In addition, UP argues that Ameren Missouri has recouped its investment by obtaining much lower rates from UP as a result of competition from BNSF, and that BNSF is a stronger competitor to UP than SP was, because SP did not have single line access to the PRB.[35] UP also suggests that Ameren Missouri appeal to the Board to enforce the BNSF access condition, if Ameren Missouri believes that its BNSF access is not sufficiently addressing competitive harms arising from the UP-SP merger.[36]

UP states that it would have charged more for the Rock Island Line, if the transaction had included the right to serve the Labadie Plant.[37] UP argues that the quitclaim deed filed in connection with the transaction leaves no doubt that the sale of the Rock Island Line included a restriction on service to the Labadie Plant, and that the restriction was reflected in a reduced sale price,[38] as the quitclaim states that the restriction on service was a "material inducement to Grantor [UP] to sell the Property to Grantee [GRC], that Grantor would not have been willing to

[32] Id. I. 14-15, 34.

[33] Id. I. 57.

[34] See UP's Reply 11, see also Ameren Missouri's Opening Evidence I. 18.

[35] Id. 9, n.18.

[36] Id. n.19.

[37] Id. 6.

[38] See id., see also id. 14-15.

sell the Property to Grantee without such restriction, and that such restriction has been taken into account in the purchase price for the Property."[39]

DISCUSSION AND CONCLUSIONS

This controversy surrounds a contractual service restriction, which we will refer to as the Labadie Service Restriction, or provision at issue, created when UP sold the former Rock Island Line to MCRR in 1997. As part of that sale, MCRR agreed to a permanent prohibition on serving the Labadie Plant. Before the sale, the Labadie Plant was served by UP and SP. Ameren Missouri, which owns the Labadie Plant, sought and obtained competitive access relief from the Board for the Labadie Plant as part of the UP-SP merger. As such, UP and BNSF, via trackage rights, now serve that plant.

MCRR and Ameren Missouri now ask the Board to revoke its prior authority for the sale and to modify the terms of that sale, or declare the service restriction provisions unenforceable, to allow MCRR to serve the Labadie Plant. If granted, the Labadie Plant would be served by three carriers: UP, BNSF, and MCRR. UP defended the interchange commitment as lawful, but also advocated that we reject the request because Ameren Missouri and MCRR were parties to the agreement and Ameren Missouri already obtained competitive access relief on the basis of this interchange commitment during the UP-SP merger.

We have discretion to revoke an exemption pursuant to 49 U.S.C. § 10502(d). As applicable here, we may revoke an exemption, in whole or in part, if the Board finds that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101.[40] The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns.[41] Generally, the Board will revoke an exemption if a petitioner has demonstrated conduct that frustrates the rail transportation policy, and the Board has determined that the reinstated regulatory provisions could ameliorate the alleged harms.[42]

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[39] Id. 7.

[40] See, e.g., Ind. Hi-Rail Corp.—Lease and Oper. Exemption—Norfolk and W. Rwy. Line Between Rochester and Argos, In., and Exemption from 49 U.S.C. §§ 10761, 10762, and 11141, FD 32162 et al. (STB served Jan. 30, 1998). We may also revoke if there is a showing that the notice of exemption contained false and/or misleading information, or revocation is necessary to ensure the integrity of the Board's processes. No party has alleged such circumstances are present here.

[41] I&M Rail Link, LLC—Acquis. and Oper. Exemption—Certain Lines of Soo Line R.R., FD 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998).

[42] See Entergy Ark. Inc. and Entergy Serv. Inc. v. Union Pac. R.R. and Mo. & N. Ark. R.R., FD 42104, slip op at 16 (STB served Mar. 15, 2011); see also Rail Gen. Exemption Auth.—Miscellaneous Agric. Commodities—Pet. of G. & T. Terminal Pkg. Co. to Revoke Conrail Exemption, 8 I.C.C.2d 674, 676-77 (1992), aff'd in pertinent part sub nom. Mr. Sprout,

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Ameren identifies the Labadie Service Restriction in this case as a paper barrier, also referred to as an interchange commitment, that contractually limits the competitive rail options of the Labadie Plant that would otherwise exist. The agency has addressed interchange commitments in numerous proceedings. In Review of Rail Access, the Board noted that while restrictions that limit competitive interchange are best evaluated on a case-by-case basis, contractual provisions that completely ban competitive interchange and those that go on in perpetuity deserve particular scrutiny.[43] Here, the provision at issue does both: it prevents MCRR from serving the Labadie Plant altogether and it does so on a permanent basis. Moreover, the interchange commitment is not contained in a lease, which by its terms would expire, but rather was part of a line sale.

However, the shipper here has already sought and obtained competitive access relief from the Board based, in part, on the provision at issue. Also, both the carrier whose service is restricted and the shipper were involved in creating the contract that contained the restriction and indeed had previously declined an offer to buy the line without the interchange commitment. Under these circumstances, the Board concludes that it would not be appropriate to revoke its prior approval for the sale of the Rock Island Line, nor attempt to rewrite the terms of that transaction. We elaborate on these two points below.

Significant competitive access relief. In 1996, the Board approved the UP-SP merger. As a condition of that approval, the Board required UP to grant trackage rights to BNSF to ensure that no shipper would be left captive to a single railroad as a result of the merger. Four years later, Ameren Missouri (as Union Electric) filed a petition asking the Board to confirm that this condition applied to the Labadie Plant. In its responsive filings, UP acknowledged that the Labadie Plant was a 2-to-1 shipper, but claimed that the agreement with BNSF did not apply to the Labadie Plant. The Board disagreed. Instead, the Board granted the competitive access relief sought by Ameren Missouri and directed UP and BNSF to negotiate an agreement permitting BNSF to provide service to the Labadie Plant. The Board specifically relied upon the contractual service limitation on MCRR that precluded MCRR service to the Labadie facility.[44]

Ten years after obtaining relief due to the Labadie Service Restriction, Ameren Missouri now seeks relief that would remove the prohibition. However, if this new relief were granted, it would remove the factual basis for the relief that Ameren Missouri already sought and obtained from the Board just after the UP-SP merger. As the Board stated in UP Control and Merger, "The contract under which the SP line was sold bars the purchaser from providing rail service to

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Inc. v. United States, 8 F.3d 118 (2d Cir. 1993); see also Minn. Commercial Ry.—Trackage Rights Exemption—Burlington N. R.R., 8 I.C.C.2d 31, 35-36 (1991) (the Board's revocation analysis "focuses on the sections of the RTP [rail transportation policy] related to the underlying statutory section from which an exemption is sought").

[43] See Review of Rail Access at 15, 16.

[44] UP Control and Merger at 8, n.23.

UE at Labadie . . . [and] were it not for the prohibition against service to UE at Labadie, UE would presently have, at least as respects traffic moving via St. Louis, the intramodal competitive option that it seeks under the auspices of the omnibus clause. . . ."[45] More importantly, the action Ameren Missouri has requested would result in dual grants of relief meant to address the very same issue – negative impacts on competitive service to the Labadie Plant arising from the UP-SP merger. The Board has already determined that the service limitation caused the Labadie Plant to be a 2-to-1 facility under the UP-SP merger, and has therefore already granted Ameren Missouri relief due to the conduct Ameren Missouri now complains about. Ameren Missouri may obtain service from both UP and BNSF. Should either carrier fail to provide service upon reasonable request, Ameren could also seek relief from the Board. Although Ameren Missouri now claims that the BNSF service option is not providing the full benefit of competition to the Labadie Plant due to BNSF's service inadequacies, we note that Ameren Missouri has neither filed sufficient evidence to support this claim, nor filed a complaint over this alleged lack of service from BNSF. We therefore conclude that further regulation aimed at providing Ameren Missouri overlapping relief due to the Labadie Service Restriction is not necessary to carry out the competition goals identified in the rail transportation policy of 49 U.S.C. § 10101.

Parties to the creation of the contract. Another of the principal arguments offered by Ameren Missouri and MCRR to support our revoking or otherwise restructuring the terms of their agreement with UP is that the Labadie Service Restriction violates 49 U.S.C. § 11101 by preventing MCRR from meeting its common carrier obligation to provide transportation or service upon reasonable request to the Labadie Plant, and that this agreement also contravenes Ameren Missouri's right to service. While the Board encourages privately negotiated agreements, contractual restrictions that unreasonably interfere with common carrier operations may be deemed void as contrary to public policy.[46] The contractual restrictions found by the agency to be unreasonable usually involved agreements between two parties that abrogate the rights or common carrier duties of a third party, which had limited or no involvement in the negotiations or contractual agreement.[47]

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[45] Id. The agreement entered into by UP-SP and BNSF, pursuant to which BNSF received various merger-related rights, included the omnibus clause, which protected the 2-to-1 points that were not covered by the trackage rights and line sales provided for in that agreement. See id. at 2, n.4; see also Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 247 n.15 (1996), aff'd Western Coal Traffic League v. STB, 169 F.3d 775 (D.C. Cir. 1999).

[46] See Hanson Natural Res. Co.—Non-Common Carrier Status—Pet. for a Decl. Order (Hanson), FD 32248, slip op. at 3 (ICC served Dec. 5, 1994). See also United States v. Baltimore & O. R. R., 333 U.S. 169, 177-78 (1948) (parties may not enter into trackage rights agreements that abrogate rights and responsibilities under the statutory provisions of the Interstate Commerce Act).

[47] Ameren Missouri and MCRR cite Hanson and R.R. Ventures. Inc.—Abandonment Exemption—Youngstown. Ohio and Darlington. Penn. (R.R. Ventures), AB-556 (Sub-No. 2X) (STB served Jan. 7, 2000) in support of their claims. However, the complainants' citations to

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Here, the evidence submitted clearly indicates that all parties to this proceeding actively worked toward the sale of the Rock Island Line, including the Labadie Service Restriction, and that some of these parties also actively promoted this transaction before the Board. Nor can any party claim that it was unaware of the Labadie Service Restriction. Here, MCRR is not an uninvolved third party whose common carrier duties are being interfered with unexpectedly by the Line Sale Agreements. Instead, MCRR is a signatory of the Line Sale Agreements. We thus conclude that MCRR knew or should have known the impact that the Labadie Service Restriction would have on its operations and finances as a short line railroad, as well as its obligations as a common carrier. Presumably, MCRR also understood that the transaction had certain benefits to it because it proceeded with the transaction. The mere fact that MCRR has now reweighed the pros and cons of a transaction that it entered into 10 years ago does not justify complete or partial revocation of the exemptions to restructure the transaction.

Nor can Ameren Missouri reasonably claim that it is an uninvolved third party to the transaction. The evidence of record indicates that Ameren Missouri had full knowledge of this provision at issue and its impact at the time of the transaction,[48] and likely participated in the negotiations surrounding the transaction to ensure the sale of the Rock Island Line took place. In its pleadings, Ameren Missouri claims that it had no role in negotiating the Line Sale Agreements, that the terms had been reached long before Ameren Missouri was approached by GRC to provide financing, and that UP would only permit the deal to proceed under the original terms.[49] We find these assertions unpersuasive. Ameren Missouri had the choice to decline to participate in the transaction on the terms offered. Instead, the transaction was consummated with the financial backing of a corporate affiliate of Ameren Missouri, and upon closing, GRC sold a majority interest in MCRR to an affiliate of Ameren Missouri.[50] We also note that Ameren Missouri indicates in the pleadings that it wanted the sale of the Rock Island Line to take place, in order to avoid the abandonment of the Rock Island Line and the ensuing effect on economic development that an abandonment would have on Ameren Missouri's customer service area.[51] Even if UP, as the seller, had more market leverage over the transaction than

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Hanson and R.R. Ventures are unavailing as none of the parties in those cases had received prior, overlapping relief or been harmed by contractual provisions they entered into.

[48] See Ameren Missouri's Complaint 11. (Noting that Ameren Missouri reluctantly agreed to the restriction, intending to challenge it later if necessary.)

[49] See Ameren Missouri's Opening Evidence I. 20.

[50] See id. I. 20.

[51] See Ameren Missouri's Complaint 10. We also note that while the record does not clearly indicate if the Rock Island Line would have been abandoned had its sale not proceeded forward, Ameren Missouri and MCRR could nevertheless have avoided the negative effects of the abandonment of the Rock Island Line, in addition to this transaction, by invoking the offer of financial assistance (OFA) provisions of 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c) to purchase the Rock Island Line for continued rail service. We are therefore not convinced that
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Ameren Missouri, GRC, or MCRR, all entities were aware of the Labadie Service Restriction and the terms of the transaction prior to closing.

In light of their involvement in the creation of this agreement, we find the arguments raised by Ameren Missouri and MCRR insufficient to justify revoking our prior approval or otherwise restructuring the agreement terms.

Conclusion. Under the unique facts of this case where the shipper has previously obtained competitive access relief based on the Labadie Service Restriction, and the short line and the shipper were participants in the transaction that resulted in it, the Board declines to provide the requested relief. Although the facts of this case lead us to conclude that relief is not appropriate, as the Board stated in Review of Rail Access, we will closely scrutinize transactions containing interchange commitments on a case-by-case basis.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The complaint and petition for revocation are denied.

2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Chairman Elliott did not participate.

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the sale of the Rock Island Line, with the interchange commitment included, was the only mechanism available to Ameren Missouri and MCRR to avoid the loss of rail service in the area.